FHA HOUSING TAX CREDIT PILOT PROGRAM
FREQUENTLY ASKED QUESTIONS #3

October 16, 2012

1. 2530 Requirements

Q. In a list of Asset Management Exhibits, the Pilot's *Processing Guide* indicates that 2530s are "Not required for Nonprofit Board Members." What about officers of nonprofit boards?

A. The omission of more detailed text on this topic resulted in an oversimplification. The exclusion of nonprofit board members from the 2530 requirement is limited to those board members who do not serve as officers of the boards. The President or Chair of the Board, the Vice President, Treasurer and Secretary and other such officers of the board are to submit 2530s, as are executive staff members who report directly to the board.

2. $40,000 Rehabilitation Limit and Davis Bacon Wage Rates

Q. If the owner is willing to pay Davis Bacon Wage Rates and the rehabilitation cost per unit falls at or below $40,000, but the mortgage is needed to pay more of the $40,000 limit than the 223(f) rehabilitation limits would allow, is the project eligible for the Pilot Program?

A. No, the dollar amount of repairs paid with Section 223(f) proceeds is limited to $6,500 multiplied by the High Cost Percentage. Higher amounts would require the loan to be processed as a 221(d)(4).

3. PCNA Requirements on Three Year Waiver Projects

Q. Does HUD require a PCNA for a newly constructed or fully rehabilitated Pilot project for which a three-year-rule waiver is being requested?

A. Yes. The PCNA requirement has not been changed for the Pilot, so the requirements are the 223(f) requirements listed in part 13 of ML 2012-12 on the 3 year rule waiver. HUD may consider adjusting these requirements in the future but evidence of completion, latent defects protection, attention to accessibility compliance and a long term replacement reserve analysis will always be essential.

4. HERA's Ten Year Holding Period Exceptions for Tax Credit Projects

Q. HERA provides for an exception to the LIHTC's ten year holding period requirement for certain federally assisted buildings, specifically those that are 221(d)(3 or 4)- or 236-insured. Does HUD consider projects to be financed with the 223(f) program, such as Tax Credit Pilot projects, to be eligible for the exception?

A. Because the HERA language refers to the two specific programs noted above as well as "…any other program administered by the Department of Housing and Urban Development…" staff believe that the waiver should apply to the 223(f) projects financed under the Pilot. HUD does not render tax advice however so owners should seek tax counsel with respect to this interpretation.

5. Reduced Affordability Restrictions for Bond Financed Projects in New York City

Q. Now that projects in New York are eligible for the Pilot Program, will HUD consider use of the reduced LIHTC minimum affordability set-asides created for bond financed projects in New York City? (Section 42 of the IRS Code provides that for projects located in New York City, the "40-60" test for determining whether a project qualifies as a low-income project is replaced by a "25-60" test. Thus the affordability requirement is reduced from 40% to 25% of the units to be set aside at 60% of area median income.

A. For Tax Credit Pilot Program purposes it would not make sense to recognize a separate, less restrictive affordability set-aside rule for NYC, since the set-aside is such a fundamental element of the Tax Credit Pilot Program and our larger efforts to increase affordability within FHA's portfolio. However, HUD will consider the NYC exception to the set-aside on a case by case basis, when it can be demonstrated that the less restrictive NYC rents will still provide for significant affordability in the local market. Accordingly the owner and lender will need to make the case for that in the loan application package.

6. Mortgage Credit Protocol for General Contractors

Q. We have a 223(f) project using a general contractor and we need to know what sort of mortgage credit review would be appropriate. The project also involves an architect as well as plans and specs, although the work technically does not fall into sub rehab.

A. The Pilot's mortgage credit guidance includes the submission requirements in the Exhibits Checklist, (including an Identity of Interest (IOI) disclosure, resume and schedule of work in progress), the Mortgage Credit section in the Lender's Narrative (p.28-33) and the discussion in the Processing Guide (p.26-28). Much of this addresses requirements for a "principal" but for Tax Credit Pilot purposes the General Contractor will not be treated as a principal. Generally for 223(f)s we can rely on more limited information: This would focus on the GC's experience, including a resume with a discussion of relevant multifamily experience, a schedule of jobs in progress, the 2328, the IOI certification, and the 2530/2013-SUPP 4-magic-questions. An exception can be made if a lender or the Designated Underwriter determines that greater detail is warranted, for example, in the case of a relatively weak borrower and high cost rehab.

7. Status of New Legal Forms for Passive Investors

Q. At the original Lender/Hub Staff Training several new legal documents relevant to passive investors were introduced and discussed, but we have not yet seen final copies. Can you tell us whether they are complete and if so, how to access them?

A. The new documents developed at HQ include *Instructions for Pre-Approval of Special Limited Partner As Interim Replacement GP/Manager for LIHTC Transactions,* and the *Rider to Security Instrument- LIHTC Properties,* as well as the *Passive Investor Certification* which was to replace the former *LLCI Certification.* All of these are now completed and may be found on HUD's Pilot website under "FHA-LIHTC Certification and Pre-Approval Docs" at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/map/maphome/taxcredit.

8. Commissioning of Rent Comparability Studies and Appraisals

Q. Under the MAP Program, the Lender cannot use the same firm to complete both the Market Study and Appraisal. Under the PILOT Program Guide, I did not see anything stating that you cannot use the same firm to complete both the Appraisal and RCS. So, would it be acceptable to use the same firm for completing both the Appraisal and RCS?

A. If the borrower commissions the RCS, the same firm cannot do the appraisal. However if the lender commissions the RCS, the same firm can also do the appraisal.

9. Repair Costs Funded with Mortgage Proceeds

Q. According to the MAP Guide the maximum amount of repairs that may be funded with the HUD mortgage should be the greater of (i) $6,500 per unit multiplied by the local high cost percentage or (ii) 15% of the As Repaired Value, or the substantial replacement of two major systems. Does this apply to the Tax Credit Pilot Program?

A. No, the maximum allowable rehabilitation cost funded with mortgage proceeds under the Pilot Program is $6,500 per unit, multiplied by the High Cost Percentage.